S.B. CIVIL WRIT PETITION NO.506/2005
Gyan Singh vs. Harchand Ram and another.

Date : 24.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. N.L. Joshi, for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the trial court committed serious error of law in holding that the agreement dated 10.2.2003 was a conditional agreement as it was provided in the agreement that by 30.4.2003, if the vendor will fail to return the amount of consideration of Rs.1,34,000/-, then this agreement will convert into the agreement for sale of the property.

According to learned counsel for the petitioner, the agreement is in fact a concluded contract for the sale of the property and the plaintiff has filed the suit for specific performance of the contract. It is submitted that as per the law applicable, the document in question is an instrument as defined in the Stamps Act and such agreement falls in the definition of conveyance because by this agreement, the vendor purports to convey right, title and interest in the property through agreement to sale.

Learned counsel for the petitioner in this regard relies on the judgment of this Court in S.B. Civil Writ Petition No.5756/2004 (Dhannaram vs. Sohan Lal &

Others) wherein this Court on facts of that case held that the agreement to sale is a concluded contract and the petitioner has taken a self contradictory stand as at one stage, the petitioner says that the agreement is not a concluded contract whereas seeking specific performance of contract.

According to learned counsel for the petitioner, in view of the above, the agreement dated 10.2.2003 is a concluded contract and, therefore, liable for stamp duty as well as it requires registration. He further submitted that the stamp duty payable on agreement is 3% and that has not been paid.

I have considered the submissions of learned counsel for the petitioner.

At the outset, it may be held that the agreement to sale conveys no right, title or interest. It only gives a right to the party to seek its enforcement. The right, title and interest stands conveyed only if formal deed in accordance with law is executed in pursuance to the agreement to sale.

So far as the question whether the contract is concluded or not is not very much material in view of the fact that the plaintiff has filed a suit for specific performance of the contract on the basis of the condition which is part and parcel and inseparable condition in the agreement itself. Therefore, the only

question which survives is whether the Court below has committed any jurisdictional error in rejecting the objection of the petitioner against the admissibility of the document on the ground of non-payment of full stamp duty and on the ground of full registration fee.

It appears from the order that the trial court decided the question while following the law as laid down by this Court in the decision rendered in Mahendra Kumar vs. Manni Devi and others reported in 2001(4) W.L.C. Page 703 as well as the judgment of the Hon'ble Supreme Court in the case of Vipin Shanti Lal Panchal vs. State of Gujarat reported in 2001 R.L.W. (S.C.) page 169. The trial court adopted the procedure as directed by these judgments and rejected the petitioner's objection at that stage when it was raised.

In view of the above, I do not find that the trial court has committed any jurisdictional error so as to call for any interference by this Court under Article 227 of the Constitution of India.

Consequently, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya